2. "Incumbents' Bill of Rights"

43. AMTA, like other commenters, notes that incumbent licensees which vacate their channels in the upper band enhance the value of a large-block system. At the same time, many traditional SMR operators are convinced that their businesses will suffer if they are forced to migrate to other frequencies.[31/] In recognition of this conviction, and to protect incumbent licensees facing reconfiguration, AMTA urges the FCC to mandate certain guarantees for any incumbent agreeing to reconfiguration within the first year after large-block license grant. These measures have been labelled informally the "Incumbents' Bill of Rights:"

** full cost compensation for reconfiguration and channel-for-channel comparable spectrum within the 800 MHz SMR band. If the large-block licensee cannot provide this, no reconfiguration would occur, either during the first year or at any other time.

** FCC tax certificates;

** prospective 70-mile co-channel protection; i.e., no future short-spacing of the incumbent's system on the new channels;

** current 70-mile co-channel protection on the new channels wherever possible while affording protection to existing operators;

** transferability of all guarantees to third parties, should the incumbent wish to assign or transfer its system;

[31/] See, e.g., Comments of Chadmoore Communications, Inc. ("Chadmoore"), Communications Service Center ("CSC"), Fisher Communications, Inc. ("Fisher") and Small Business Administration ("SBA").

** all channels within the large block licensed to a single entity must be reconfigured; no selective choice of individual channels or stations or drawn-out reconfiguration unless agreed to by the parties.

Any incumbent which volunteers for reconfiguration during the first year after large-block license grant, and which ultimately is retuned, would be allowed the above guarantees **at a minimum, regardless of when the incumbent system is actually retuned.**[32/] This allows incumbents and large-block licensees to negotiate an appropriate schedule for reconfiguration once the incumbent has stepped forward, providing both sides with greater certainty for purposes of developing business plans. AMTA urges the FCC to provide that all parties involved in reconfiguration negotiations will be entitled to full benefits of the Commission's Alternative Dispute Resolution (ADR) procedures.[33/]

D. **"Progressive Reconfiguration".**

44. Both sets of "claimants" to the upper 200 channels of the 800 MHz SMR band have strong arguments: existing licensees provide low-cost, efficient services to hundreds of thousands of customers, while current wide-area licensees seeking to convert to contiguous spectrum are implementing new technology which will use scarce spectrum even more efficiently and provide publicly beneficial competition to other wireless mobile

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[32/] AMTA emphasizes that this "Bill of Rights" includes only minimum, guaranteed incentives for reconfiguration. There is nothing to prevent the parties from agreeing to additional measures, such as additional channels or cash premiums, through negotiation.

[33/] 47 C.F.R. § 1.18.

services. Thus, in determining whether and how incumbents should be reconfigured from their current channels after new licensing it is vital to strike a balance between these competing interests. After months of discussion of this issue, AMTA recommends the following proposal to the Commission, which it characterizes as "progressive reconfiguration".

45. Nextel's and others' comments in this proceeding recommend mandatory retuning of incumbent licensees due to the large-block licensee's need for clear, contiguous spectrum, and their concern that one or two "holdout" incumbents could jeopardize systems across entire geographic areas.[34/] However, traditional operators object strenuously to the concept of large-block licensees "calling the shots" of who is to be retuned, and when, without regard to the needs or wishes of the incumbent. Both sides agree that the marketplace should drive these decisions to the extent possible. Therefore, AMTA recommends that large-block licensees should "earn" mandatory reconfiguration of remaining channels through consolidation of a large percentage of licensed channels on a voluntary basis.

1. First Year. AMTA submits that the incentives outlined above will encourage many incumbents, currently short-spaced and unable to modify their systems routinely, to negotiate with the large-block licensee within the first year after large-block license grant.[35/] If the large-block licensee is able to make a showing to the FCC that

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[34/] See FN 15 supra.

[35/] AMTA continues to support the position taken in its initial Comments concerning incumbents' right to modify their existing systems. Modifications and additional base stations should be allowed within the incumbent's 40/22 dBμ interference contour. See

it has consolidated **eighty percent (80%) of the constructed channels** within the geographic area at any time after the first year, it should be entitled to mandatory reconfiguration of the remaining **notified** licensees. A channel is to be counted each time it is shown on a valid SMR license at coordinates within the geographic area, and constructed by a date certain to be chosen by the FCC.[36/] Consolidation may occur through sale to the large-block licensee, affiliation agreement, or voluntary reconfiguration.

2. Subsequent Years. At the end of the second year following large-block license grant, the percentage of consolidated channels necessary to earn mandatory reconfiguration would drop to sixty-five percent (65%); at the end of the third year, it would fall further to fifty percent (50%) of total constructed channels. Four years after license grant the large-block licensee would be entitled to mandatory reconfiguration of any remaining notified incumbent licensees.

46. While allowing the eventual reconfiguration of incumbents necessary for implementation of new technologies, AMTA submits that progressive reconfiguration provides choice to the incumbent SMR licensee: it can seek to remain on current channels as long as possible, or can choose to negotiate with the large-block licensee for a voluntary arrangement to win as many incentives as possible.

AMTA Comments at ¶¶ 37-9.

[36/] Due to frequency re-use, it is likely that most channels in the upper band have been licensed more than once in most BEAs.

E. Lower Band Channels.

47. In its Comments, AMTA noted the advantages to both continued site-specific and geographic licensing of the remaining SMR channels, but was unable to provide a consensus position.[37/] The Association also stressed that the 80 remaining channels of the current SMR Category are woefully inadequate to accommodate the anticipated continued growth of this service, along with the reconfiguration necessary to clear large-block channels for new systems.[38/]

1. Spectrum Availability.

48. AMTA continues to urge the Commission to allocate the 150 General Category channels on a prospective basis for exclusive SMR eligibility. In the months since the initiation of this proceeding, licensing on the General Category spectrum has been active. AMTA understands that a majority of applicants has applied to offer commercial (SMR) services. The Association again stresses that limiting General Category eligibility on a prospective basis to SMR applicants will only codify the use of the channels that has already occurred. Further, any remaining availability of these channels will be in heavy demand for facilities of licensees being reconfigured from the upper band. Whether voluntary or mandatory, AMTA submits that the Commission cannot reasonably regulate the re-allocation of part of the SMR band without accommodating those licensees already occupying the spectrum.

[37/] AMTA Comments at ¶¶ 47-50.

[38/] Id. at ¶¶ 43-6.

2. BEA Licensing.

49. As noted above, the Association submits that geographic licensing is necessary for the balance of the 800 MHz SMR band, both the 80 remaining SMR channels and the 150 General Category now being primarily used by SMR licensees. AMTA recommends that these channels also be licensed on a BEA basis.

50. Unless the "lower band" channels are eventually licensed in a manner similar to large-block channels, licensees not winning a large-block license will be relegated to second-class status. AMTA anticipates continued rapid growth of the SMR industry; certainly, there will be continued consolidation of current facilities and licenses into larger systems. Operators licensed on lower band channels must have the same opportunity to combine their systems into a wide-area system in the future as is being provided now for today's larger operators. Consolidation of smaller systems into competitive networks offering new technologies and efficient use of spectrum will be greatly facilitated by a geographic overlay comparable with the large-block licenses now being proposed.

51. This recommendation will require a further balancing of the rights of existing licensees on these frequencies and those of parties retuned to those channels. While it could be argued that the migration process should be finalized before local BEA auctions commence, that approach would appear to dictate that the current freeze on applications involving the lower 80 channels continue until that time, and that a freeze be imposed on licensing of General Category spectrum.

52. This result would be unacceptable to the Association. Since all

incumbents, not just those on the lower channels, would presumably be eligible for future licensing on that spectrum (whether by auction or some other means), there is no reason to delay indefinitely the further licensing of those bands. The current freeze already has inhibited the activities of a significant number of industry participants. It should be lifted as expeditiously as possible. Indeed, AMTA would hope that an FCC decision to conduct local BEA auctions on a timely basis would spur both large-block licensees and incumbents in the upper band to proceed as quickly as possible to complete voluntary negotiations and thereby secure the rights to which that entitles incumbents.

IV. COMPETITIVE BIDDING PROCEDURES

53. As discussed supra, and for the reasons described in its Comments in this proceeding, AMTA is not persuaded that the Commission has statutory authority to use competitive bidding procedures to award 800 MHz SMR licenses. The Association recommends that the Commission give serious consideration to adoption of rules which avoid instances of mutual exclusivity wherever possible as directed by Congress.[39/] Because the vast majority of those filing Comments agreed with AMTA's position on that point,[40/] there were relatively few pleadings which addressed the FNPR's proposal regarding competitive bidding procedures in any detail. The Association takes this opportunity to do so with the understanding that it opposes the use of auctions for large-block SMR licensees, and most certainly for local SMR authorizations.

[39/] 47 U.S.C. § 309(j)(6)(E).

[40/] See FN 13 supra.

54. In the Notice, the FCC tentatively recommended the use of a competitive bidding process that paralleled closely the model adopted for PCS spectrum auctions.[41/] FNPR at ¶¶ 72-106. That approach would include the use of simultaneous multiple round auctions for wide-area authorizations, but single round sealed bid auctions for local licenses, with appropriate upfront payments, down payments, and bid withdrawal, default and disqualifications rules. The Commission also proposed the application of unjust enrichment provisions, performance requirements, and anti-collusion rules. Finally, the FCC sought comment on the appropriate treatment of Designated Entities and entrepreneurs' blocks in this band.

A. Competitive Bidding Methodology

55. AMTA agrees that, if the Commission is to conduct auctions for the assignment of 800 MHz large-block authorizations, those auctions should employ the simultaneous multiple round model. The Commission concluded that such an approach would be appropriate where, as here, there is a substantial interdependency among the licenses being auctioned and their value is high. FNPR at ¶ 75. The Association agrees with that assessment, and notes that the interdependency will be even greater if these licenses are issued on the more numerous BEA basis as proposed herein. It is highly probable that bidders will seek to aggregate across spectrum blocks and across geographic regions. The strategies involved in consolidating markets and spectrum

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[41/] See Second Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2348 (1994), recon. Second Memorandum Opinion and Order, FCC 94-215 (adopted August 12, 1995, released August 15, 1994).

blocks cannot be implemented properly, that is with maximum economic efficiency, unless the properties are auctioned simultaneously in multiple rounds. The efficacy of this approach has been demonstrated in the PCS experience and should be replicated here.

56. The optimal model to employ should the FCC use auctions to award even local licenses, over the vehement objections of the industry, is less obvious. The FCC has proposed the use of single round sealed bids as simpler and less costly for the smaller operator. FNPR at ¶ 77. AMTA does not dispute that assessment, and is reluctant to suggest an approach that might further complicate what would be an unjustifiably costly and complex process for those entities under any circumstances. However, some grouping of frequency blocks and geographic areas might be necessary for this purpose if the Commission determines to issue even local license on a geographic, rather than site-specific, basis.

57. As detailed in AMTA's Comments in this proceeding, the sites for existing, local SMR operations were selected based on their ability to serve an anticipated subscriber base, irrespective of their location within a particular county or other geopolitical boundary.[42/] Conversion from that approach to a geographic-based licensing scheme will dictate that licensees attempt to secure the use of their channels within every BEA (or whatever area is ultimately specified by the FCC) in which they are currently providing service on those frequencies. This may necessitate participation in multiple auctions in neighboring BEAs, with a "win" only if all such areas are

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[42/] AMTA Comments at ¶ 49.

acquired. Thus, like the large-block bidder, even local operators may need to participate in geographically proximate auctions simultaneously to pursue a successful strategy. While the Association believes that these concerns dictate against the use of auctions for local SMR systems, should the FCC nonetheless adopt that proposal, it must select an auction model that adequately addresses these matters.

B. Bidding Procedures

58. AMTA agrees that appropriate measures are needed to ensure that only serious, qualified bidders participate in auctions. In fact, the concerns that prompted the FCC's rules governing procedural, payment and penalty issues vis-a-vis auctions generally are heightened when, as in the 800 MHz band, numerous existing operators and their customers have already invested hundreds of millions of dollars in both local and wide-area system development, monies which would be at risk if the FCC's procedures permit manipulation of the auction process for anti-competitive or speculative purposes.

59. Because its members could suffer serious, likely irreparable, injury if the Commission's rules do not provide adequate protection in these areas, the Association recommends that the FCC scrutinize carefully every aspect of these provisions. AMTA supports the use of substantial upfront and down payments for bidders for large-block spectrum awards along the lines of those used in the PCS model. The Association also endorses substantial economic penalties for defaults between auction and licensing, as well as adoption of bid withdrawal, default and disqualification rules consistent with those applicable to PCS auctions as outlined in the Notice. FNPR at ¶ 83.

60. There is, however, one aspect of the competitive bidding rules which

should be designed specifically for the 800 MHz service as it will facilitate broader industry participation in the auction process. AMTA urges the Commission to adopt rules which freely permit the partitioning of large-block licenses, both by frequency blocks and by geographic areas, as long as construction and coverage requirements are satisfied. Flexibility in post-auction partitioning will encourage development of bidding consortia of smaller operators which otherwise would be incapable of participating in this process. This measure should help ensure that competitive bidding does not limit large-block licensing opportunities only to the largest of entities.

C. Treatment of Designated Entities/Entrepreneurs' Blocks

61. The FNPR questions whether provisions, akin to those applicable to PCS, should be adopted to promote participation in 800 MHz SMR auctions by Designated Entities and/or Entrepreneurs' set-asides. The Association recommends against employing either of these provisions in this particular arena.

62. AMTA must first note that the entire issue of Designated Entity status, as it relates to females and minorities, has been challenged in the courts and is under serious reconsideration by Congress.[43/] Because the outcome of those reviews is unknown, and because of the inherent differences between this service and PCS, no auction provisions should be adopted for those entities. While the small business category is not currently under review, AMTA suggests that the better approach for this heavily licensed service would be to incorporate preferential provisions for existing operators, virtually all of

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[43/] See FCC Urges D.C. Circuit to Expedite Auction Case, Public Notice No. 52422, Released February 24, 1995.

which are substantially smaller than the smallest proffered definition of "Small Business". These "micro-businesses" are the pioneers of the SMR industry, yet many would be incapable of competing on a pure economic basis with entities traditionally defined as small business.

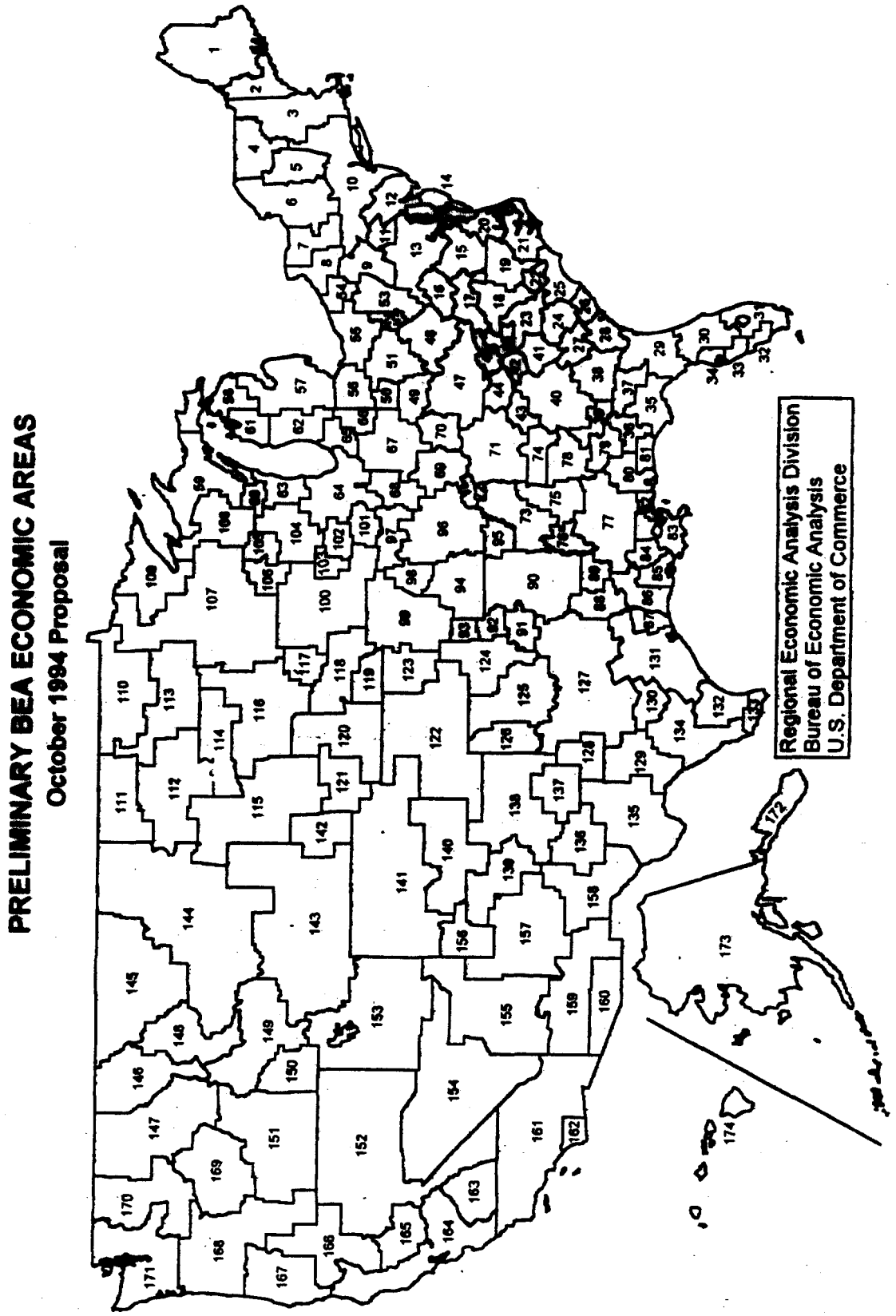
63. Similarly, AMTA agrees with the FCC's assessment that this spectrum is not well suited for a set-aside "Entrepreneurs' Block". FNPR at ¶ 104. As noted in AMTA's Comments in this proceeding, as well as in numerous other filings, there is no spectrum to "set aside" for such entities. More critically, the Association would argue that the entrepreneurs that should be entitled to a preference in the assignment of available 800 MHz spectrum are the existing SMR operators that have made the service the success it is today.

64. Therefore, AMTA recommends that the Commission award bidding or other appropriate preferences to existing SMR operators seeking spectrum in the auction to expand their current operations. The Association would limit the preference to licensees proposing to expand existing SMR systems or to add facilities within the same BEA or in a BEA congiguous to one in which the bidder currently provides service. In AMTA's opinion, such a preference(s) would conform both to the FCC's auction authority and to its overriding statutory obligation to promote the availability of adequate radio facilities at reasonable charges.

V. CONCLUSION

65. For the reasons described above, AMTA urges the Commission to proceed expeditiously to complete this proceeding, consistent with the recommendations detailed herein.

ATTACHMENT 1



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With the exception of three special-node areas (Alaskan Panhandle, Western Oklahoma, and Northern Michigan), each economic area is named for the node of its largest CEA. The following list provides economic-area codes and names. Economic-area boundaries and codes are shown on the map following the list.

EA Code	Name
001	Bangor, ME
002	Portland, ME
003	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH
004	Burlington, VT
005	Albany-Schenectady-Troy, NY
006	Syracuse, NY
007	Rochester, NY
008	Buffalo-Niagara Falls, NY
009	State College, PA
010	@New York-No. New Jersey-Long Island, NY-NJ-CT-PA (CMSA–70)
011	Harrisburg-Lebanon-Carlisle, PA
012	@Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD (CMSA–77)
013	@Washington-Baltimore, DC-MD-VA-WV (CMSA–97)
014	*Salisbury, MD
015	Richmond-Petersburg, VA
016	*Staunton, VA
017	Roanoke, VA
018	Greensboro-Winston-Salem-High Point, NC
019	Raleigh-Durham-Chapel Hill, NC
020	Norfolk-Virginia Beach-Newport News, VA-NC
021	Greenville, NC
022	Fayetteville, NC
023	Charlotte-Gastonia-Rock Hill, NC-SC
024	Columbia, SC
025	Wilmington, NC
026	Charleston-North Charleston, SC
027	Augusta-Aiken, GA-SC
028	Savannah, GA
029	Jacksonville, FL
030-	Orlando, FL
031	@Miami-Fort Lauderdale, FL (CMSA–56)
032	Fort Myers-Cape Coral, FL
033	Sarasota-Bradenton, FL
034	Tampa-St. Petersburg-Clearwater, FL
035	Tallahassee, FL
036	Dothan, AL
037	Albany, GA
038	Macon, GA
039	Columbus, GA-AL
040	Atlanta, GA
041	Greenville-Spartanburg-Anderson, SC
042	Asheville, NC
043	Chattanooga, TN-GA
044	Knoxville, TN
045	Johnson City-Kingsport-Bristol, TN-VA
046	Hickory-Morganton, NC
047	Lexington, KY
048	Charleston, WV
049	@Cincinnati-Hamilton, OH-KY-IN (CMSA–21)
050	Dayton-Springfield, OH
051	Columbus, OH
052	Wheeling, WV-OH
053	Pittsburgh, PA
054	Erie, PA
055	@Cleveland-Akron, OH (CMSA–28)
056	Toledo, OH
057	@Detroit-Ann Arbor-Flint, MI (CMSA–35)
058	*Northern Michigan, MI
059	Green Bay, WI
060	Appleton-Oshkosh-Neenah, WI
061	*Traverse City, MI
062	Grand Rapids-Muskegon-Holland, MI
063	@Milwaukee-Racine, WI (CMSA–63)
064	@Chicago-Gary-Kenosha, IL-IN-WI (CMSA–14)
065	Elkhart-Goshen, IN
066	Fort Wayne, IN
067	Indianapolis, IN
068	Champaign-Urbana, IL
069	Evansville-Henderson, IN-KY
070	Louisville, KY-IN
071	Nashville, TN
072	*Paducah, KY
073	Memphis, TN-AR-MS
074	Huntsville, AL
075	*Tupelo, MS
076	*Greenville, MS
077	Jackson, MS
078	Birmingham, AL
079	Montgomery, AL
080	Mobile, AL
081	Pensacola, FL
082	Biloxi-Gulfport-Pascagoula, MS
083	New Orleans, LA
084	Baton Rouge, LA
085	Lafayette, LA
086	Lake Charles, LA
087	Beaumont-Port Arthur, TX
088	Shreveport-Bossier City, LA
089	Monroe, LA
090	Little Rock-North Little Rock, AR
091	Fort Smith, AR-OK
092	Fayetteville-Springdale-Rogers, AR
093	Joplin, MO
094	Springfield, MO
095	*Jonesboro, AR
096	St. Louis, MO-IL
097	Springfield, IL
098	Columbia, MO
099	Kansas City, MO-KS
100	Des Moines, IA
101	Peoria-Pekin, IL
102	Davenport-Moline-Rock Island, IA-IL
103	Cedar Rapids, IA
104	Madison, WI
105	La Crosse, WI-MN
106	Rochester, MN
107	Minneapolis-St. Paul, MN-WI
108	Wausau, WI
109	Duluth-Superior, MN-WI
110	Grand Forks, ND-MN
111	*Minot, ND
112	Bismarck, ND
113	Fargo-Moorhead, ND-MN
114	*Aberdeen, SD
115	Rapid City, SD
116	Sioux Falls, SD
117	Sioux City, IA-NE
118	Omaha, NE-IA
119	Lincoln, NE
120	*Grand Island, NE
121	*North Platte, NE
122	Wichita, KS
123	Topeka, KS
124	Tulsa, OK
125	Oklahoma City, OK
126	*Western Oklahoma, OK
127	@Dallas-Fort Worth, TX (CMSA–31)
128	Abilene, TX
129	San Angelo, TX
130	Austin-San Marcos, TX
131	@Houston-Galveston-Brazoria, TX (CMSA–42)
132	Corpus Christi, TX
133	McAllen-Edinburg-Mission, TX
134	San Antonio, TX
135	Odessa-Midland, TX
136	*Hobbs, NM
137	Lubbock, TX
138	Amarillo, TX
139	Santa Fe, NM
140	Pueblo, CO
141	@Denver-Boulder-Greeley, CO (CMSA–34)
142	*Scottsbluff, NE
143	Casper, WY
144	Billings, MT
145	Great Falls, MT
146	*Missoula, MT
147	Spokane, WA
148	*Butte, MT
149	*Idaho Falls, ID
150	*Twin Falls, ID
151	Boise City, ID
152	Reno, NV
153	Salt Lake City-Ogden, UT
154	Las Vegas, NV-AZ
155	*Flagstaff, AZ
156	*Farmington, NM
157	Albuquerque, NM
158	El Paso, TX
159	Phoenix-Mesa, AZ
160	Tucson, AZ
161	@Los Angeles-Riverside-Orange County, CA (CMSA–49)
162	San Diego, CA
163	Fresno, CA
164	@San Francisco-Oakland-San Jose, CA (CMSA–84)
165	@Sacramento-Yolo, CA (CMSA–82)
166	Redding, CA
167	Eugene-Springfield, OR
168	@Portland-Salem, OR-WA (CMSA–79)
169	*Pendleton, OR
170	Richland-Kennewick-Pasco, WA
171	@Seattle-Tacoma-Bremerton, WA (CMSA–91)
172	*Alaskan Panhandle, AK
173	Anchorage, AK
174	Honolulu, HI

The "*" denotes a nonmetropolitan-node name, the "@" denotes a CMSA name; all other names are MSA's or NECMA's.

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CERTIFICATE OF SERVICE

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 1st day of March, 1995, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Reply Comments to the following:

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